

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RODNEY V. BRUCE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>FRESH START BAKERIES, INC.</b>	)	Docket No. 230,516
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appealed Administrative Law Judge Julie A.N. Sample's preliminary hearing Order dated March 24, 1998.

**ISSUES**

The Administrative Law Judge granted claimant's preliminary hearing requests for medical treatment and temporary total disability compensation for a right shoulder injury. Claimant alleged he injured his right shoulder while performing his regular work activities from December 4, 1997, through his last day worked of January 2, 1998.

Respondent contends claimant failed to prove his work activities performed during that period caused his right shoulder injury. The single issue before the Appeals Board for review is whether claimant's right shoulder injury arose out of and in the course of his employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Appeals Board has reviewed the preliminary hearing record and has considered the arguments contained in the briefs of the parties. The Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed.

**Findings of Fact**

- (1) Claimant had left rotator cuff surgery performed by orthopedic surgeon Lowry Jones, Jr., M.D., in January 1997.
- (2) Because of the left shoulder injury, claimant was off work from January 1997 until he was returned to work with restrictions in September 1997. Claimant was limited to a 30-pound lifting restriction.
- (3) Before claimant's left shoulder injury, claimant was employed by the respondent as a "pan man" which required, among other duties, for claimant to push 1500 pound carts of pans and to lift on a repetitive basis 50-pound bags of ingredients.
- (4) When claimant returned to work in September of 1997, the respondent placed claimant in a light-work job as a tray feeder. This job required claimant to place baskets from a stack onto a product conveyor line. The baskets weighed anywhere from 3.3 pounds to 10 pounds and were contained in 7-foot high stacks. The job required claimant to repetitively use both of his upper extremities and to reach overhead when he first had to place the baskets from the 7-foot stack to the conveyor line.
- (5) During the third week of September 1997, claimant was required to push heavy stacks of product from the freezer and had to load the product into a truck. Following that heavy work activity, claimant's right shoulder became symptomatic.
- (6) Claimant's right shoulder worsened as he continued to perform his repetitive work activities of tray feeder.
- (7) Claimant notified respondent that his right shoulder was symptomatic on or about December 4, 1997.
- (8) Respondent sent claimant to Occupational Medicine Association in Kansas City for examination and evaluation on December 4, 1997.
- (9) On December 10, 1997, an MRI examination indicated a partial right rotator cuff tear.
- (10) Respondent denied claimant's request for medical treatment for the right shoulder injury. Respondent determined the injury was not related to claimant's work.
- (11) Claimant continued to work with pain through December 1997. Finally, claimant left work on January 2, 1998, because the pain was so severe he could no longer perform his job duties.
- (12) On January 6, 1998, claimant went on his own to orthopedic surgeon Lowry Jones, Jr., M.D., the doctor who treated his left shoulder injury.

(13) Dr. Lowry diagnosed claimant with a significant right rotator cuff injury. On February 17, 1998, the doctor performed an arthroscopic acromioplasty followed by an open repair of the right rotator cuff.

(14) Claimant offered and the Administrative Law Judge admitted into evidence at the preliminary hearing a letter dated February 19, 1998, from Dr. Jones. Claimant gave Dr. Jones a history of having increased pain in the right shoulder due to repetitive overhead work activities. Dr. Jones noted significant atrophy at the site of the rotator cuff tear which he believed was some chronic repetitive impingement.

(15) Dr. Jones, in his letter, further opined that claimant was unable at that time to use his right upper extremity and was temporarily and totally disabled from gainful employment.

#### Conclusions of Law

(1) After claimant returned to work in September 1997, he either originally injured his right shoulder or aggravated a preexisting right shoulder condition at work while pushing stacks of product from the freezer and loading that product on a truck.

(2) Thereafter, claimant's right shoulder injury worsened as he performed the repetitive work activities for the respondent.

(3) The Appeals Board finds claimant has proved through his testimony and the medical report of Dr. Jones that his repetitive work activities more likely than not aggravated a preexisting right shoulder condition resulting in a permanent right shoulder injury that caused claimant to leave work on January 2, 1998. A worker is entitled to workers compensation benefits where a preexisting condition is aggravated or accelerated by a work-related accident. See Johnson v. Skelly Oil Co., 181 Kan. 655, 656, 312 P.2d 1076 (1957).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Julie A.N. Sample dated March 24, 1998, should be, and is hereby, affirmed.

#### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1998.

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BOARD MEMBER

c: Michael A. Preston, Overland Park, KS  
Kenneth J. Hursh, Overland Park, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director